

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

CUSTOMER NO. 22927

Appellants: Andrew S. Van Luchene, John C. Caine, Kathleen M. Van
Luchene, Michiko Kobayashi, Ronald E. Zepp, Robert J.
Anderson
Application No.: 09/586,742
Filed: June 5, 2000
Title: SYSTEMS AND METHODS FOR FACILITATING A
TRANSACTION BY MATCHING SELLER INFORMATION
AND BUYER INFORMATION

Attorney Docket No.: 99-091
Group Art Unit: 3625
Examiner: Yogesh C. Garg

REPLY BRIEF

**BOARD OF PATENT APPEALS
AND INTERFERENCES**

Mail Stop: Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Appellants hereby submit remarks in this Reply Brief pursuant to 37 C.F.R. § 41.41 and in response to the Examiner's Answer mailed on August 10, 2006. This Reply Brief is submitted as a supplement to the Appeal Brief mailed on May 31, 2006 and should, if applicable, be considered as a request to maintain the current appeal to the Board of Patent Appeals and Interferences from the decision of the Examiner in the Final Office Action mailed January 6, 2006 (Part of Paper No./Mail Date 20051230), rejecting claims **95-97**.

REMARKS

I. Incorrect Data

Appellants respectfully note that Appellants' representative is **Carson C.K. Fincham**, not "Carl C.K. Friedman" as indicated by the Examiner on the cover page of the Examiner's Answer.

II. No New Grounds for Rejection

Appellants note that the Examiner has, in the Examiner's Answer mailed on August 10, 2006 (hereinafter the "Examiner's Answer"), not altered or added any grounds of rejection with respect to the claims being appealed. Accordingly, this Reply Brief is submitted voluntarily pursuant to 37 C.F.R. § 41.41.

III. Determining a Quality Class of an Item

Appellants incorporate by reference herein the arguments made with respect to *determining a quality class of an item*, a limitation of claims **95-97**, which were presented in each of (i) the Response to the Fourth Office Action which was mailed by Appellants on October 18, 2005, (ii) the Request for Pre-Appeal Brief Review which was mailed by Appellants on April 4, 2006, and (iii) the Appeal Brief mailed on May 31, 2006.

In short, those arguments have exemplified Appellants' attempts to point out to the Examiner that the acts of **providing sort-able search results** and *determining a quality class of an item* **are not equivalent**. While Appellants believe that the previous remarks incorporated by reference herein more than adequately point out the differences between these two actions, a further example is provided as follows to hopefully further clarify some distinctions.

Appellants note that the two actions – ‘providing sort-able search results’ in the cited reference, and the claimed limitation of *determining a quality class of an item* – may be utilized together, without introducing redundancy, which is evidence that the two actions are indeed different. For example, while the reference provides search results for laptop computers, wherein the search results may include and/or be sorted by price, the reference merely ‘determines a price’ for each of the items in order to display such prices. Appellants’ claimed limitation could be incorporated into the search results of the reference to allow the search results to further show a “quality class” associated with each item (*e.g.*, “Good”, “Average”). In other words, while the cited reference may provide (*e.g.*, via the search results) some information that may be utilized to determine a “quality class”, the reference never actually determines (nor even contemplates) quality classes.

IV. Determining that Items do not Correspond

Appellants incorporate by reference herein the arguments made with respect to *determining that items do not correspond*, a limitation of claims **95-97**, which were presented in each of (i) the Response to the Fourth Office Action, (ii) the Request for Pre-Appeal Brief Review, and (iii) the Appeal Brief.

In short, those arguments have exemplified Appellants’ attempts to point out to the Examiner that the acts of **counter offering** and *determining that items do not correspond* **are not equivalent**. While Appellants believe that the previous remarks incorporated by reference herein more than adequately point out the differences between these two actions, further remarks are provided as follows to hopefully further clarify some distinctions, as well as to address statements made by the Examiner in the Examiner’s Answer.

Appellants note that the Examiner states in the Examiner's Answer that Appellants' specification does not provide support for this limitation. Examiner's Answer, pg. 8, lines 8-12. Interestingly, however, the Examiner has not seen fit to reject the pending claims based on this assertion. Instead, the Examiner uses this assertion to alter the meaning of the claimed limitation. While the claimed limitation actually reads *determining, via a processor, whether the item desired for purchase by the buyer and the item being offered for sale by the seller correspond*, for example, the Examiner instead interprets the limitation to mean that "the buyer and seller offers do not correspond" (which would presumably include the case where the offered and acceptable prices do not correspond). It is this **altered version of the limitation** that the Examiner then applies to the cited reference.

Appellants respectfully reiterate that support for the above-quoted limitation may generally be found at least at Appellants' Specification, pg. 5, lines 25-26; pg. 6, lines 18-19; pg. 9, lines 17-22; pg. 10, lines 28-29; pg. 11, lines 1-2; pg. 11, lines 15-25; pg. 12, lines 9-21; pg. 18, line 10; pg. 20, lines 21-27; pg. 21, lines 14-23; pg. 22, lines 12-18; pg. 22, lines 24-31; pg. 23; pg. 24, lines 1-11; pg. 25, lines 11-12; pg. 26, line 17; pg. 30, lines 11-20; pg. 31, line 30 to pg. 32, line 8; FIG. 9; pg. 34, line 22 to pg. 36, line 23; FIG. 10; pg. 38, lines 29-30; pg. 39, lines 3-4; FIG. 14, step 1408; pg. 42, line 6 to pg. 44, line 10; FIG. 17; pg. 47, line 4-11; FIG. 19; pg. 48, line 7-9; pg. 48, lines 15-19; FIG. 21; pg. 49, lines 26-27; pg. 50, lines 5-6; FIG. 23, step 2306; and pg. 51, line 11.

Appellants also note that the case where items do not correspond is contemplated in Appellants' Specification at least with respect to the case where customers are allowed to commit to buy the desired item if it can be matched at a later time (which indicates that the desired and available items do not correspond at the current time). See, for example, Specification, pg. 11, lines 26-29; pg. 17,

line 28 to pg. 18, line 2; pg. 21, lines 4-9; pg. 21, lines 19-20; pg. 41, lines 8-11; pg. 44, lines 11-19; pg. 48, lines 13-14; pg. 50, lines 15-29; and pg. 52, lines 16-22.

Further, the Examiner simply cannot alter the meaning of the claimed limitation to blatantly differ from the language as set forth. Appellants maintain that the cited references fails to teach or suggest *determining that **items** do not correspond*. Whether the cited reference teaches or suggests “determining that offers correspond”, **is irrelevant** to the claimed limitation. Accordingly, the Examiner continues to fail to apply the cited reference to the actually recited claim limitations.

V. Conclusion

At least for the above-stated reasons, in supplement to those submitted and described in both the Appellants' Request for Pre-Appeal Brief Review and the Appeal Brief, Appellants respectfully request that the Examiner's rejections of the pending claims be reversed.

Respectfully submitted,

September 7, 2006
Date

/Carson C.K. Fincham, Reg.#54096/
Carson C.K. Fincham
Attorney for Applicants
Registration No. 54,096
Walker Digital, LLC
cfincham@walkerdigital.com
203-461-7017 /voice
203-461-7018 /fax